Equitable Oil Co., 116 La. 773, 41 South. 88. In Virginia the doctrine seems to be that a waiver of the right of appeal is not effectual unless the agreement to waive is based upon sufficient consideration, or the agreement has been acted upon by one of the parties to such an extent that failure to enforce it would prejudice this party. See *Southern Railroad Co.* v. *Glenn's Adm'r*, 98 Va. 309, 36 S. E. 395.

MARRIAGE—ANNULMENT—INSUFFICIENCY OF EVIDENCE TO SHOW MARRIAGE IN JEST.—The plaintiff had paid a short visit to the town in which the defendant lived. Just before leaving, the defendant asked the plaintiff why he did not take a vacation. The plaintiff replied that, in order to get a vacation, it was necessary for him to get a different position or to get married. To the defendant's question, "Why don't you get married?" the plaintiff replied, "Who? Why don't you and I get married?" That evening they took out a license and the next day the marriage was duly performed. The clergyman and the one witness produced did not know that they were participating in a jest. The parties never lived together nor had marital intercourse. The defendant neither claimed nor received any support from the plaintiff. The plaintiff's petition to annul the marriage as having been a vacation frolic was supported only by the plaintiff's testimony. *Held*, the marriage is binding. *Girvan* v. *Griffin* (N. J.), 108 Atl. 182.

To constitute a valid marriage, the marriage contract must be entered into with the consent and agreement of both parties freely and intelligently given. See *Keyes* v. *Keyes*, 22 N. H. 553; *Town of Mountholly* v. *Town of Andover*, 11 Vt. 226, 34 Am. Dec. 685. The consent may be expressed verbally or in writing, or implied from the acts of the parties or the ceremony performed. *Hilton* v. *Roylance*, 25 Utah 129, 69 Pac. 660, 95 Am. St. Rep. 821, 58 L. R. A. 723. Without such consent, the marriage is a nullity although solemnized formerly by a properly authorized minister or magistrate. *Roszel* v. *Roszel*, 73 Mich. 133, 40 N. W. 858, 16 Am. St. Rep. 569; *Town of Mountholly* v. *Town of Andover, supra*. In addition, there must be an actual present intention on the part of both to enter into an immediate and continuing matrimonial relation. *Hooper* v. *McCaffery*, 83 Ill. App. 341. See also *Lee* v. *State*, 44 Tex. Cr. App. 354, 72 S. W. 1005, 61 L. R. A. 904.

A marriage contracted in jest with no intention that it shall be valid and binding is a mere nullity. *McClurg* v. *Terry*, 21 N. J. Eq. 225. In this case, the facts were as follows: A number of young people were returning from an excursion trip. One of the young ladies challenged a male member of the group to marry her immediately. He, in jest, accepted the challenge. At their request, a justice of the peace, himself a member of the party, duly performed the marriage ceremony. All members of the group except the justice of the peace testified that they regarded the ceremony as a mock marriage. The parties never regarded themselves as married. Upon production of these facts at the trial, the court held that the marriage was a mere nullity.

Equity will decree the annulment of a marriage entered into under a mistake as to its legal effect, where one or both of the parties did not

intend that it should be a present and actual marriage, and where the marriage was never consummated. *Clark* v. *Field,* 13 Vt. 460. So, where the authorities of a certain town hired A., who resided in another town, to marry B., a pauper, in order to impose B.'s support upon that town, A. never intending to fulfill the obligations of marriage, the marriage was annulled on B.'s petition. *Barnes* v. *Wyethe,* 28 Vt. 41.

Mere words without the intention corresponding to them, will not constitute a marriage, but the words are evidence of this intention, and, if once exchanged, it must be clearly shown that both parties understood that they were not to have any effect. *McClurg* v. *Terry, supra.*

In a suit for annulment of a marriage the burden is upon the plaintiff to sustain his material allegations, for the marriage is *prima facie* valid. *Bassett* v. *Bassett,* 9 Bush (Ky.) 696. And in view of the peculiar nature of the contract of marriage, the courts will not grant a decree of annulment except upon the production of clear, satisfactory and convincing evidence. *Dawson* v. *Dawson,* 18 Mich. 334; *Powell* v. *Powell,* 27 Miss. 783. Such a decree will not be given upon the uncorroborated testimony of the plaintiff. *Crane* v. *Crane,* 62 N. J. Eq. 21, 49 Atl. 734; *Bange* v. *Bange,* 46 Misc. Rep. 196, 94 N. Y. Supp. 8.

The fact that the testimony of the plaintiff was for the most part uncorroborated seems to have been controlling in the decision in the instant case.

WILLS—CONTINGENT WILLS—WHEN CONSTRUED UNCONDITIONAL AND PERMANENT—WHEN CONSTRUED CONDITIONAL OR CONTINGENT.—The decedent, before going to the hospital for a slight operation, wrote the following letter to her aunt: "On Sunday evening I go to St. Elizabeth's Hospital to have a slight operation. I do not anticipate any trouble, but no one never knows. If anything should happen to me, I want you to do this for me," etc. The decedent recovered from the operation and gave the letter to the beneficiary, informing him that it was her will. Later on, she died and the letter was offered for probate as her will. *Held,* the letter constituted a conditional will which was revoked by her recovery from the operation. *Walker, Adm'r* v. *Hibbard,* 185 Ky. 795, 215 S. W. 800.

The law looks with disfavor upon conditional wills, and, unless the intention to make the will contingent upon a certain event is clearly and unequivocally shown, the courts will construe the will as unconditional and permanent. The courts generally agree upon the law involved, but the interpretation of the particular facts in each case would tend to lead many into the belief that the cases are in irreconcilable conflict. But, as a matter of fact, this is not the case. See *Walker, Adm'r* v. *Hibbard, supra.*

Where the contemplated contingency did not take place, the following expressions have been held to make the will unconditional or permanent: "Being about to travel a considerable distance, and knowing the uncertainty of life, think it advisable to make some disposition of my estate, do make this my last will and testament." *Tarver* v. *Tarver,* 9 Pet. 174. "I am going on a journey and may, not ever return.